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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,482	12/10/2001	Craig C. Andrews	LYNN/0130.D	7645

7590

09/05/2003

STREETS & STEELE  
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EXAMINER

VALENTINE, DONALD R

ART UNIT

PAPER NUMBER

1742

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/016,482

Applicant(s)

ANDREWS ET AL.

Examiner

Donald R. Valentine

Art Unit

1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-44, 68-80 and 87-91 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 68-80 and 87-91 is/are allowed.
- 6) ☒ Claim(s) 1-4, 10, 18, 24, 28, 44, 82 and 83 is/are rejected.
- 7) ☒ Claim(s) 5-9, 11-17, 19-23, 25-27 and 29-43 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 5
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 10, 18, 24, 28 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Clark.

Clark discloses an “electrochemical cell” with electrolyte disposed between “first and second electrodes”. A power source is disclosed and there is means for retracting one or more of the first and second electrodes out of contact with the electrolyte. See Figure; col. 2, lines 17-62; col. 3, lines 1-10 and 25-28; and col. 4, lines 1-2. Clark provides “automatic” operation. (See Claim 1).

Clark’s accumulator falls within the meaning of applicants’ passive automatic retracting means. The pneumatic retraction device of Clark appears to be the functional equivalent of applicants’ stored energy devices or accumulators because they operate on stored (compressed) air.

***Claim Rejections - 35 USC § 112***

3. Claims 82-83 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are method claims dependent from apparatus claims. See *Ex parte Forsyth et al* 151 USPQ 55.

***Allowable Subject Matter***

4. Claims 68-80 and 87-91 are allowed.

5. Claims 5-9, 11-17, 19-23, 25-27, 29-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 82-83 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: The references of record do not show or suggest an electrochemical cell with first and second electrodes and an electrolyte disposed between them and having a power source for applying voltage between the first and second electrodes and means for automatically retracting one or more of the electrodes out of contact with an electrolyte which is an ion exchange membrane.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Specht shows spring means for expanding electrodes against a membrane.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald R. Valentine whose telephone number is 703-308-3327. The examiner can normally be reached on Monday-Friday 9:30-6:00.

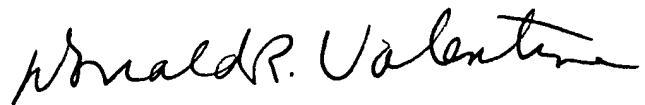
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on 703-308-1146. The fax phone

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number for the organization where this application or proceeding is assigned is  
(703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, reading "Donald R. Valentine". The signature is written in a cursive style with a large, stylized "V".

Donald R. Valentine  
Primary Examiner  
Art Unit 1742

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